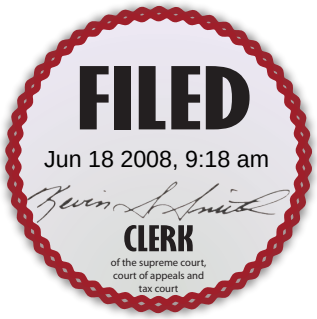

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IN THE
COURT OF APPEALS OF INDIANA

MATTHEW ZIGLER,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 49A04-0712-CR-670
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Mark Stoner, Judge
Cause No. 49G06-0606-MR-106254

June 18, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

BROWN, Judge

Matthew Zigler appeals his convictions and sentences for murder[1] and theft as a class D felony.[2] Zigler raises two issues, which we revise and restate as:

I. Whether the State's evidence negated the presence of sudden heat;

II. Whether the trial court abused its discretion in sentencing him; and

III. Whether his sentence is inappropriate in light of the nature of the offense and the character of the offender.

We affirm.

The relevant facts follow. On the evening of June 6, 2006, Zigler, then nineteen years old, drank a few beers, used methamphetamine, and drove to a strip club with his friend Stefan Lee Miller. While Zigler and Miller were drinking at the club, Zigler bought a drink for Laurene June, who worked as a dancer there. Zigler "hit it off" with June, and Zigler, Miller, and June soon left the club "to party" at Justin Powers's apartment. Transcript at 350. Zigler drove his car separately to Powers's apartment, and June and Miller followed in June's car.

Powers and Jeffrey Scott Hellmann were at the apartment when Zigler, Miller, and June arrived. Zigler's eyes were "real big and dilated" and he appeared to be intoxicated. Id. at 99. Zigler and Powers went to a back room and, moments later, began yelling at each other. When they emerged, Powers ordered everyone to leave. In response, June "started throwing a fit" and slapped Powers. Id. at 100. As Miller grabbed her, June

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[1] Ind. Code § 35-42-1-1 (2004) (subsequently amended by Pub. L. No. 151-2006, § 16 (eff. July 1, 2006), Pub. L. No. 173-2006, § 51 (eff. July 1, 2006), and Pub. L. No. 1-2007, § 230 (eff. March 30, 2007)).

[2] Ind. Code § 35-43-4-2 (2004).

slapped Powers a second time. Once Miller and June were outside, Zigler apologized to Powers and, according to Hellman, said, "I'm going to kill the bitch." Id. at 105. Zigler, Miller, and June then left for Miller's apartment.

At Miller's apartment, Zigler, Miller, and June drank beer and smoked marijuana. Zigler and June discussed having sex, and June asked Miller if she could use the shower. Once June was in the shower, Zigler asked Miller if Miller would "give him some time," and Miller left the apartment to walk around and smoke cigarettes outside. Id. at 175. He circled the apartment complex on foot and smoked four or five cigarettes. He stopped at a friend's apartment, but nobody was there.

When Miller returned, he noted that the music coming from inside his apartment was too loud. Once inside, he found Zigler walking out of the bedroom with a "nervous" or "panicked look." Id. at 181. Miller asked what was wrong and entered the bedroom, where he found his bed flipped over and June lying dead on the floor against the wall. Miller panicked and asked Zigler "what the f*** he just did." Id. at 182. Zigler responded that June had bit him and that he had choked her, and he showed Miller the bite mark. He asked Miller to help him move the body to the trunk of his car, but Miller refused. Zigler grew more persistent and "got . . . up in [Miller's] face" until, thinking that Zigler might kill him too, Miller agreed to help him move the body to the bedroom closet. Id. at 185. Zigler then left for Powers's apartment, but Miller stayed behind in a state of shock.

Powers and Hellman awoke to Zigler pounding loudly on the front door of Powers's apartment. At first, they refused to answer, but Zigler removed the screen from

one of the windows and attempted to enter the apartment. Powers then swung the front door open, and Zigler, asking for some water, told them that he had "killed that bitch." Id. at 108. When Powers asked him how, he said that he had strangled her and made a strangling motion with his hands. Zigler then asked them for "help moving the body," but they refused, thinking he had made the story up. Id. at 109. Zigler left, and Powers and Hellman went back to sleep.

Zigler returned to Miller's apartment and told Miller that they had to "get rid" of June's car. Id. at 189. Zigler found June's purse, took money from it, and gave Miller the keys to her car. With Zigler following in his car, Miller drove June's car to another location and left it there, and Zigler threw June's purse in a dumpster nearby. Miller then begged Zigler to take him to his parents' house, which Zigler did. When they arrived, Miller mentioned calling the police, but Zigler said nothing and "sped off." Id. at 194. Miller threw the keys to June's car away and went inside.

Zigler awoke the next day and, by instant message, informed his friend Larissa Stokes that he had killed somebody. Stokes contacted Powers and Hellman, and they called the police. When Miller's father drove Miller to find his car, the police were already waiting for him. Zigler later turned himself in after driving to Florida.

The State charged Zigler with murder and robbery as a class A felony.[3] At the trial, Zigler testified that, after Miller left him with June in the apartment, Zigler and June had sex in the shower and then moved to Miller's bed. When Zigler asked June to "go

[3] Ind. Code § 35-42-5-1 (2004).

down on" him, she bit him, and he smacked her. Id. at 356. June "started going crazy" and the two began "swinging at" each other, until Zigler choked her and she died. Id. at 356-357.

Dr. Stephen Radentz, a forensic pathologist, testified that, before she died, June suffered multiple abrasions, contusions, and focal hemorrhaging around the chin, jaw, neck, and chest, further injuries to her hands, knuckles and wrists, and numerous blunt injuries to her arms, legs, and torso. Dr. Radentz estimated that Zigler applied forty to fifty pounds of force to June's throat in strangling her. Given the severity and number of June's injuries, Dr. Radentz concluded that the assault, from the beginning up to June's death, lasted ten to fifteen minutes at a minimum, and possibly up to half an hour as June would "lose consciousness, [then] come back and struggle." Id. at 306.

The jury found Zigler guilty of murder and theft as a class D felony, a lesser included offense of robbery. At the sentencing hearing, the trial court found Zigler's youth and remorse to be mitigating factors. The trial court found the following aggravating factors: (1) Zigler's criminal history; (2) the "sheer brutality" of June's manner of death; (3) the fact that Zigler was on probation for a previous battery conviction when he killed June; (4) that fact that he led Miller into criminal activity "for the pure selfish reason of trying to hide what he did;" and (5) the fact that Zigler concealed evidence after the crime. Id. at 513, 520. The trial court sentenced Zigler to fifty-five years for the murder conviction and three years for the theft conviction and ordered that the sentences be served consecutively. Thus, Zigler received a total sentence of fifty-eight years in the Indiana Department of Correction.

I.

The first issue is whether the State's evidence negated the presence of sudden heat. Zigler argues that the evidence was insufficient to sustain his conviction for murder and that the jury should have found him guilty of voluntary manslaughter instead. When reviewing claims of insufficiency of the evidence, we do not reweigh the evidence or judge the credibility of witnesses. Jordan v. State, 656 N.E.2d 816, 817 (Ind. 1995), reh'g denied. Rather, we look to the evidence and the reasonable inferences therefrom that support the verdict. Id. We will affirm the conviction if there exists evidence of probative value from which a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt. Id.

A person commits murder when the person "knowingly or intentionally kills another human being." Ind. Code § 35-42-1-1. On the other hand, a person commits voluntary manslaughter when the person knowingly or intentionally kills another human being "while acting under sudden heat." Ind. Code § 35-42-1-3(a) (2004). Sudden heat is a mitigating factor that reduces what otherwise would be murder to voluntary manslaughter. I.C. § 35-42-1-3(b). Thus, "[t]he element distinguishing murder from voluntary manslaughter is 'sudden heat,' which is an evidentiary predicate that allows mitigation of a murder charge to voluntary manslaughter." Dearman v. State, 743 N.E.2d 757, 760 (Ind. 2001). The Indiana Supreme Court has defined "sudden heat" as "anger, rage, resentment, or terror sufficient to obscure the reason of an ordinary person, preventing deliberation and premeditation, excluding malice, and rendering a person incapable of cool reflection." Id.

"To obtain a conviction for murder, the State is not required to negate the presence of sudden heat because '[t]here is no implied element of the absence of sudden heat in the crime of murder.'" Crain v. State, 736 N.E.2d 1223, 1238 (Ind. 2000) (quoting Earl v. State, 715 N.E.2d 1265, 1267 (Ind. 1999)). "However, once a defendant places sudden heat into issue, the State then bears the burden of negating the presence of sudden heat beyond a reasonable doubt." Id. The State "may meet this burden by rebutting the defendant's evidence or affirmatively showing in its case-in-chief that the defendant was not acting in sudden heat when the killing occurred." Id. "Although it is the State's burden to disprove sudden heat once it becomes an issue, its presence is a question of fact for the jury." Carroll v. State, 744 N.E.2d 432, 434 (Ind. 2001); Boone v. State, 728 N.E.2d 135, 139 (Ind. 2000) ("Existence of sudden heat is a classic question of fact to be determined by the jury."), reh'g denied.

Zigler argues that the State failed to disprove the presence of sudden heat and that his murder conviction should be vacated. Specifically, Zigler argues that he killed June in sudden heat because he was intoxicated and because June bit him.

The evidence presented at trial reveals that Zigler told Powers and Hellman that he was "going to kill the bitch." Transcript at 105. Later, when Miller left so that Zigler could be alone with her, Zigler and June struggled, and Zigler beat her and choked her to death. Before she died, June suffered multiple abrasions, contusions, and focal hemorrhaging around the chin, jaw, neck, and chest, further injuries to her hands, knuckles and wrists, and numerous blunt injuries to her arms, legs, and torso. Given the severity and number of June's injuries, Dr. Radentz concluded that the assault, from the

beginning up to June's death, lasted ten to fifteen minutes at a minimum, and possibly up to half an hour as June would "lose consciousness, [then] come back and struggle." Id. at 306. Zigler later asked Powers and Hellman for some water and told them that he had "killed that bitch." Id. at 108.

Although Zigler may have been angry that June bit him while he was trying to have sex with her, such testimony does not reveal sufficient provocation to establish sudden heat. See, e.g., Storey v. State, 552 N.E.2d 477, 480 (Ind. 1990) (holding that the defendant's anger and rage after he fought with the victim were insufficient to obscure his reasoning where evidence revealed "defendant's deliberate and continued attack upon a quietly retreating and submissive opponent"). The State met its burden of negating sudden heat by affirmatively showing in its case-in-chief that Zigler was not acting in sudden heat when he killed June. See, e.g., Carroll, 744 N.E.2d at 434 ("As we have found the evidence sufficient to support a conviction for murder, there is no error in the jury's rejection of the defendant's claim of sudden heat.").

II.

The next issue is whether the trial court abused its discretion in sentencing Zigler. Zigler challenges the weight the trial court assigned to certain aggravating and mitigating factors and also challenges the trial court's imposition of consecutive sentences.

We note that Zigler's offense was committed after the April 25, 2005 revisions of the sentencing scheme.[4] In clarifying these revisions, the Indiana Supreme Court has held that "the trial court must enter a statement including reasonably detailed reasons or circumstances for imposing a particular sentence." Anglemyer v. State, 868 N.E.2d 482, 490 (Ind. 2007), clarified on reh'g, 875 N.E.2d 218 (Ind. 2007). We review the sentence for an abuse of discretion. Id. An abuse of discretion occurs if "the decision is clearly against the logic and effect of the facts and circumstances." Id.

A trial court abuses its discretion if it: (1) fails "to enter a sentencing statement at all;" (2) enters "a sentencing statement that explains reasons for imposing a sentence – including a finding of aggravating and mitigating factors if any – but the record does not support the reasons;" (3) enters a sentencing statement that "omits reasons that are clearly supported by the record and advanced for consideration;" or (4) considers reasons that "are improper as a matter of law." Id. at 490-491. If the trial court has abused its discretion, we will remand for resentencing "if we cannot say with confidence that the trial court would have imposed the same sentence had it properly considered reasons that enjoy support in the record." Id. at 491. However, under the new statutory scheme, the relative weight or value assignable to reasons properly found, or those that should have been found, is not subject to review for abuse of discretion. Id.

A. The Weight of Aggravating and Mitigating Factors

[4] Indiana's sentencing scheme was amended effective April 25, 2005 to incorporate advisory sentences rather than presumptive sentences. See Ind. Code § 35-50-2-7 (Supp. 2005).

Zigler argues that the trial court failed to assign the appropriate mitigating weight to his youth and appears to argue that the trial court assigned too much aggravating weight to his criminal history. Pursuant to Anglemyer, the relative weight or value assignable to reasons properly found is not subject to our review for abuse of discretion. Consequently, we cannot review Zigler's argument. See, e.g., Anglemyer, 868 N.E.2d at 491.

B. Consecutive Sentences

Zigler argues that "the trial court erred in finding the sentences on each charge should be served consecutively." Appellant's Brief at 12. "In order to impose consecutive sentences, a trial court must find at least one aggravating circumstance." Page v. State, 878 N.E.2d 404, 411 (Ind. Ct. App. 2007) (citing Ortiz v. State, 766 N.E.2d 370, 377 (Ind. 2002); Ind. Code § 35-50-1-2(c)), trans. denied. The trial court here found five aggravators, and Zigler does not challenge their validity. We conclude that the trial court did not abuse its discretion by imposing consecutive sentences.[5] See, e.g., Hampton v. State, 873 N.E.2d 1074, 1082 (Ind. Ct. App. 2007) (holding that the trial court did not abuse its discretion by imposing consecutive sentences).

III.

The final issue is whether Zigler's sentence is inappropriate in light of the nature of the offense and the character of the offender. Ind. Appellate Rule 7(B) provides that

[5] Zigler argues that the trial court failed to comply with Blakely v. Washington, 542 U.S. 296 (2004), when it imposed consecutive sentences based on its finding of aggravating factors. However, the Indiana Supreme Court has held that "a trial court's authority to order consecutive sentences was not affected by Blakely." Estes v. State, 827 N.E.2d 27, 29 (Ind. 2005) (citing Smylie v. State, 823 N.E.2d 679, 686 (Ind. 2005)).

we "may revise a sentence authorized by statute if, after due consideration of the trial court's decision, [we find] that the sentence is inappropriate in light of the nature of the offense and the character of the offender." Under this rule, the burden is on the defendant to persuade the appellate court that his or her sentence is inappropriate. Childress v. State, 848 N.E.2d 1073, 1080 (Ind. 2006).

Our review of the nature of the offense reveals that Zigler beat and choked June to death because, in his words, he was "bitten when he was expecting fellatio." Appellant's Brief at 10. Before she died, June suffered a brutal assault, which, according to Dr. Radentz, lasted at least ten and possibly up to thirty minutes. After she was dead, Zigler pocketed money from her purse and, with Miller's help, threw her body into Miller's closet.

Our review of the character of the offender reveals that, although underage, Zigler was drinking at a strip club in addition to using methamphetamine and marijuana. He has a previous battery conviction and was on probation for that conviction when he brutally murdered June. After her death, Zigler frightened Miller and tried to recruit Powers and Hellman into helping him hide the body and dispose of June's belongings. We disagree with Zigler that such actions can be attributed simply to "immaturity." Appellant's Brief at 12. Rather, they reveal a violent disposition and a shocking disregard for human life.

After due consideration of the trial court's decision, we cannot say that the sentence imposed by the trial court is inappropriate in light of the nature of the offense and the character of the offender. See, e.g., McKinney v. State, 873 N.E.2d 630, 647

(Ind. Ct. App. 2007) (holding that defendant's sentence for murder was not inappropriate), trans. denied.

For the foregoing reasons, we affirm Zigler's convictions and sentences for murder and theft as a class D felony.

Affirmed.

DARDEN, J. and NAJAM, J. concur